IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CANICE DIKE, Plaintiff	:	CIVIL ACTION
v.	:	
ASSISTANT WARDEN DALE MEISEL, et al., Defendants.	:	No. 97-2620

MEMORANDUM AND ORDER

Yohn, J. March, 1998

Canice Dike ("Dike"), an inmate at Lehigh County Prison, brings this pro se 42 U.S.C. § 1983 civil rights action against Assistant Warden Dale Meisel, Dr. Erik Vonkeil, Nurse Dorothy Langenbach, Nurse Karen Ladner, and Nurse Phyllis Acerra in their individual and official capacities. Dike alleges that defendants were deliberately indifferent to his medical needs in violation of the Eighth and Fourteenth Amendments.[1] See Amended Complaint ¶ 31. Specifically, he contends that between February 1996 and April 1997, he filled out twenty-two sickcall slips requesting treatment for a variety of symptoms, including headaches, chest pains, irregular heartbeats, insomnia, itching and burning, nose bleeds, swollen knees, and a swollen neck. See Amended

[1] The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The Eighth Amendment's prohibition against cruel and unusual punishment is made applicable to the states through the Fourteenth Amendment. See Robinson v. California, 370 U.S. 660, 666 (1962).

Complaint ¶¶ 8-28. Dike contends that Dr. Vonkeil and Nurses Langenbach, Ladner, and Acerra responded with deliberate indifference to his complaints, refusing to refer him to a specialist or to send him for an "M.R.I./Brain Scam [sic]" in order to determine the cause of his symptoms. See id. ¶¶ 13-28, 31-33. In addition, he contends that he wrote to Assistant Warden Meisel, asking Meisel to help him obtain appropriate medical treatment, and that Meisel denied him assistance. See id. ¶ 25.

Defendants Meisel, Langenbach, Ladner, and Acerra (collectively, "defendants") have moved for summary judgment pursuant to Federal Rule of Civil Procedure 56. Dr. Vonkeil has not filed a motion for summary judgment. For the reasons below, defendants' motion will be granted.

Standard of Review

Summary judgment is to be granted upon motion of any party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When a court evaluates a motion for summary judgment, "the evidence of the nonmovant is to be believed," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986), and the nonmovant must be given "the benefit of all reasonable inferences." Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995), cert. denied. -- U.S. --, 115 S. Ct. 2611 (1995). The nonmoving party, however, "must present affirmative evidence to defeat a properly supported motion for summary judgment," Anderson, 477 U.S. at 257, and "the mere existence of a scintilla of evidence in support of the plaintiff's position will

be insufficient." Id. at 252. Where the record taken as a whole "could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp, 475 U.S. 574, 587 (1986), and the motion for summary judgment should be granted.

Discussion

Accidental or inadvertent failure to provide adequate medical care to a prisoner does not violate the Eighth Amendment. See Helling v. McKinney, 113 S. Ct. 2475, 2480 (1993). Rather, in order to state a constitutional claim for medical mistreatment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); see also White v. Napoleon, 897 F.2d 103, 108-09 (3d Cir. 1990). "Deliberate indifference" exists where knowledge of a prisoner's medical need is coupled with an "intentional refusal to provide . . . care" or where "necessary medical treatment [i]s . . . delayed for non-medical reasons" or where "prison authorities prevent an inmate from receiving recommended treatment." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346-47 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988) (citations omitted). A medical need is "serious" if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Id. at 347.[2]

[2] Government officials performing discretionary functions are "immune from liability for civil damages if their conduct does not violate clearly established constitutional or statutory rights of which a reasonable person would have known." Wilson v. Schillinger, 761 F.2d 921, 930 (3d Cir. 1985), cert. denied, 106 S. Ct. 1494

Assuming, for purposes of this motion, that Dike's medical needs were "serious," his claims fail because there is no evidence that any of the moving defendants responded to his needs with deliberate indifference. Dike was examined at an outside clinic four times, by the prison doctor ten times, and by other medical staff at the prison twenty-six times, all in a twelve-month period between February 1996 and February 1997. See Defendants' Statement of Material Facts as to Which There is No Genuine Issue for Trial ("Defendants' Statement of Facts"), Exhibits C, E.[3] Dike failed to attend seven other medical appointments during this period. See id. He received a variety of tests and a number of different medications in response to his complaints. See Defendants' Statement of Facts, Exhibit C. There is no evidence that any of the "nurse" defendants intentionally refused to provide care to the extent that they were able to do so. Indeed, Dike's complaint seems to be that Dr. Vonkeil, whose conduct is not here at issue, failed to provide the treatment that Dike desired.

There is also no evidence that Nurse Langenbach, Nurse Ladner, or Nurse

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(1986) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Qualified immunity is not available to defendants in this case, however, because Dike has alleged that defendants were deliberately indifferent to his serious medical needs. See Amended Complaint ¶ 31. If Dike proves that the allegations in his amended complaint are true, he will have demonstrated that defendants violated a clearly established constitutional right of which a reasonable person would have known. See Bogue v. Vaughn, 1993 WL 497851, at *12 n.11 (Dec. 1, 1993) (citing Estelle, 429 U.S. at 104-05). The court thus must analyze whether Dike has presented enough evidence to enable a reasonable trier of fact to find that defendants' conduct actually violated his right to be free from cruel and unusual punishment in the form of deliberate indifference to his serious medical needs.

[3] These numbers do not include the examinations that Dike received between February 1997 and May 1997. See Defendants' Statement of Facts, Exhibit C. They also do not include the examinations that Dike received by mental health care professionals. See Defendants' Statement of Facts, Exhibit E.

Acerra delayed Dike's medical treatment for non-medical reasons or prevented him from receiving treatment recommended by prison physicians. Although Dike may disagree with the efficacy of the treatment that the nurses provided him, their conduct does not amount to a constitutional violation. See Coleman v. Frame, 843 F. Supp. 993, 994 (E.D. Pa. 1994). Nurse Langenbach, Nurse Ladner, and Nurse Acerra are therefore entitled to summary judgment.

Dike has also not alleged any acts or omissions on the part of Assistant Warden Meisel that evidence deliberate indifference to a serious medical need. Meisel responded to Dike's letter of January 29, 1997 by directing the prison's medical staff to review all of Dike's medical records. See Defendants' Statement of Facts, Exhibit E. There is no evidence that Meisel delayed medical treatment of Dike for non-medical reasons or prevented him from receiving recommended treatment. Meisel is thus entitled to summary judgment.

An appropriate order follows.